

Now comes the Plaintiff, by and through the undersigned counsel, and pursuant to Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure, and moves this Court for an order compelling Defendant JAMES M. KENNEDY to answer Plaintiff's Interrogatories and Request For Production of Documents. Plaintiff also requests that this Court schedule a hearing on whether to grant Plaintiff the attorneys' fees incurred in making this Motion. The reasons for said Motion are more fully set forth in the attached Memorandum.

**MEMORANDUM**

On or about April 25, 2011, Plaintiff served upon counsel for Defendant, JAMES M. KENNEDY Plaintiff's First Set of Interrogatories and Request For Production of Documents. Said Requests were to be answered and served upon counsel for Plaintiff within twenty-eight (28) days of service. A copy of the discovery requests are attached hereto and incorporated by reference as **Exhibit "A" and Exhibit "B"**, respectively.

Accordingly, Defendant was to serve his answers to said discovery requests on or before May 23, 2011. Thereafter, at the request of Defendant's attorney, Plaintiff granted a Leave to Plead for 30 days for the Defendant to respond to said discovery.

On or about July 8, 2011, Plaintiff's counsel sent a letter to Defendant's counsel requesting that the Answers be forwarded immediately. A copy of that letter is attached hereto and incorporated by reference as **Exhibit "C"**. Additionally, Plaintiff's counsel has had several telephone and/or email conversations with Defendant's counsel where the responses to the discovery request were promised.

However, as of this date, the Plaintiff has not received the Defendant's answers to the discovery requests.

So that Plaintiff can properly prepare this case for both motions and trial and before any further discovery can be performed, Plaintiff must receive the Defendant's answers.

Rule 37(a)(1) and (3)(B) of the Federal Rules of Civil Procedure provides that upon reasonable notice to all parties, a party may move for an order compelling discovery in the event that a party fails to answer interrogatories, request for admissions, or fails to produce requested documents. As indicated above, said discovery requests were served upon the Plaintiffs' attorney on April 25, 2011, and the answers to said requests are seriously past due.

Thus, it is requested that this Court issue an order requiring Defendant to answer Plaintiff's Interrogatories, and Request for Production of Documents, and serve them upon Plaintiff's counsel within seven (7) days of this Court's order.

Further, Rule 37(5)(a) of the Federal Rules of Civil Procedure states that an award of attorneys' fees and the expenses incurred in making a motion to compel, may be provided. Accordingly, Plaintiff requests that this Court schedule a hearing to determine if an award of attorneys' fees and expenses incurred is warranted.

Respectfully submitted,

/s/ Jeff L Koberg  
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Plaintiff's Motion To Compel Answers To Plaintiff's Interrogatories and Request For Production of Documents will be automatically sent pursuant to the Court's CM/ECF system to all parties and counsel of record with 12<sup>th</sup> day of October, 2011

/s/ Jeff L Koberg  
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Attorney for Plaintiff